settles the proposition that the validity and effect of covenants for title in a deed of foreign land are governed by the law of the situs. American authority upon the question is not so clear as one might wish, but it is believed that reason and convenience justify the decision of the Supreme Court rather than that of the District Court of Appeal.

HOMESTEADS: TRANSFER OF HOMESTEAD AFTER EXECUTION LEVY—*Martin v. Hildebrand* (1921) 37 Cal. App. Dec. 10, presents a point in the law of homesteads which was left undecided by the case of Boggs v. Dunn (1911) 160 Cal. 283, 116 Pac. 743. The Supreme Court, in the last-named case, held that a docketed judgment did not constitute a lien upon the property covered by a homestead declaration, even though the value of the property was in excess of the $5,000 exemption allowed by law. The court in Martin v. Hildebrand seems to hold that, even though an execution be levied upon the homestead (with a view to following the proceedings presented by Civil Code section 1245, and the sections immediately following, to reach the excess value), a purchaser from the homestead claimants takes the land conveyed freed from the lien of the execution. It is plain from the language of section 671 of the Code of Civil Procedure that no judgment lien can exist as against the homestead, because that section expressly says that the docketed judgment does not constitute a lien upon land exempt from execution, and the homestead is by statute made exempt from immediate sale on execution. But it does not necessarily follow that an execution levy may not give the creditor rights of a more extensive nature than a mere judgment lien, though there is language in the cases to the effect that no lien is created by execution levied on the homestead. Certainly it would seem that an execution levy should give the creditor advantages which cannot be divested by the homestead claimant's conveyance. Indeed, sections 1245 and 1248 of the Civil Code expressly refer to "the lien of the execution." It is therefore rather startling to be informed by the court's opinion in Martin v. Hildebrand that the execution levy "created no lien upon the property of any kind whatsoever." Certainly Boggs v. Dunn, which is relied upon as authority for this proposition, does not go to that extent. On the contrary, what Chief Justice Angellotti said in that case was that ". . . a taking by levy of execution for the purposes of the proceeding given by section 1245 et seq. of the Civil Code was essential to the creation of any lien." (160 Cal. at p. 288.) Possibly the learned court in Martin v. Hildebrand meant to say no more than was said by Chief Justice Angellotti in the case cited, but if so its form of expression is unfortunately confusing. The confusion is, moreover, not limited only to this language. The whole disposition of the case is most puzzling, no doubt because the record presented was, as the court says, "very meagre." Why should not the creditor have been entitled to proceed to have an appraisement, followed by a partition or sale, if it were found possible? The court seems to rest its denial of his right to have appraisers appointed upon the fact that because there were prior liens probably greater in amount than the value of the property, the creditor would probably get nothing. But is he not entitled to make the attempt, especially as, under the statute, the experiment must be performed entirely at his expense? The case is one of the sort that is likely to cause future litigants useless expense and labor, and future lawyers and

judges trouble and annoyance, in understanding, explaining, and distinguishing. It scarcely sheds a ray of light upon the obscure maze of the law of homesteads.

NUISANCE: UNDERTAKING ESTABLISHMENT IN RESIDENCE DISTRICT—Plaintiffs sought an injunction against an anticipated nuisance in the form of an undertaking establishment and funeral parlor in a residential neighborhood. *Held:* reversing the judgment of the lower court, that the mere annoyance and depression to the neighboring property owners occasioned by the proximity of dead bodies, funeral processions, etc., was not sufficient to constitute the establishment a nuisance. *Dean v. Powell Undertaking Company* (1921) 36 Cal. App. Dec. 921.

The holding of the trial court finds some support in decisions from other states, although in most instances where injunctions were granted, additional grounds, such as the noxious odor of formaldehyde or the danger of contagion through flies, seem also to have been relied upon. Should the psychological effect alone be sufficient to constitute such an establishment a nuisance? The Michigan Supreme Court in Saier v. Joy (1917) 198 Mich. 295, 164 N. W. 507, notes that "it requires no deep research in psychology to reach the conclusion that the constant reminder of death has a depressing influence upon the normal person. . . . Mental depression, horror and dread lower the vitality, rendering one more susceptible to disease, and reduces the power of resistance." In the opinion of the Nebraska court, in Beisel v. Crosby (1920) 104 Neb. 643, 178 N. W. 272, a similar view is expressed: "The business which defendant conducts among the homes of plaintiffs will tend to depress them mentally, to lower their vitality, and to weaken their power to resist disease." Injunctions have also been granted to prevent the location of hospitals for the treatment of cancer and tuberculosis in residence districts, the basis of the decision being that the general fear of contagion, though scientifically groundless, is sufficient proof of an unlawful interference with the enjoyment of the nearby property. Stotter v. Rochelle (1910) 83 Kan. 86, 109 Pac. 788, (cancer hospital); Everett v. Paschall (1910) 61 Wash. 47, 111 Pac. 879, (tuberculosis sanitarium). On the other hand, this view has been definitely rejected. Rea v. Tacoma Mausoleum Ass'n (1918) 103 Wash. 429, 174 Pac. 961 (mausoleum); Westcott v. Middleton (1887) 43 N. J. Eq. 478, 11 Atl. 490 (undertaker); City of Northfield v. Board, etc, of Atlantic County (1915) 85 N. J. Eq. 47, 95 Atl. 745 (tuberculosis hospital); Fleet v. Metropolitan Asylum Board (1886), 2 Times Law Reports, 361 (smallpox hospital). As the District Court of Appeal remarks in the instant case, if under the facts shown, an injunction could be had against the establishment in question, "then it would seem to follow that for the very same reasons nearly every hospital in the land could be enjoined."

PLEADING: RIGHT OF REAL ESTATE BROKER WITHOUT LICENSE TO RECOVER COMMISSION—Two opposing views have been taken by different divisions of the District Court of Appeal of a situation which gives the court an opportunity to be either liberal or technical on a point of pleading. An act of the legislature passed in 1919 created a state real estate department, a real estate